IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

CRP.No. 197 of 2000(C)

AGAINST THE ORDER DATED 17/11/1999 IN IA 2464/99 IN OS.569/1994 OF I ADDL.SUB COURT,ERNAKULAM

REVN. PETITIONER: PETITIONER: IST DEFENDANT:

MRS. SAHIDA IQBAL, W/O.T.H.MOHAMMED IQBAL,
THAMARASSERRY BUILDING, MULLASSERY CANAL ROAD,
COCHIN – 11. (DIED)

ADDL.PETITIONERS 2 AND 3 IMPLEADED:

2. T.H.MOHAMED IQBAL, AGED 44 YEARS, S/O.HAJI T.K.HAMZA,
THAMARASSERY BUILDINGS, MULLASSERY CANAL ROAD,
COCHIN – 11.

3. T.H.HASIF IQBAL, S/O.T.H.MOHAMED IQBAL, AGED 20 YEARS,
THAMARASSERY BUILDINGS, MULLASSERY CANAL ROAD,
COCHIN – 11.

ADDL.PETITIONERS 2 AND 3 ARE IMPLEADED AS THE LEGAL REPRESENTATIVES OF THE DECEASED REVISION PETITIONER AS PER ORDER DATED 22/10/2002 IN C.M.P.NO.4119/2002.

BY ADV. SRI.P.V.MADHAVAN NAMBIAR

RESPONDENTS: RESPONDENTS:PLAINTIFF/2ND DEFENDANT:
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1. C.A.KAREEM, S/O.ABOOBACKER, CHERADI P.O.,
ERIYAD, KODUNGALLUR.

2. AMEEN, S/O.SHERY SHUDDINKAZHI, ROOM NO.16,
ADANE MINISTRY LANE, HAJEE NOOR MOHAMMED BUILDING,
PAREL, MUMBAI – 12. (DELETED)

THE NAME OF THE 2ND RESPONDENT IS STRUCK OFF FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER AS PER ORDER DATED 22.3.2000 ON CMP.NO.1434/2000.

R1 BY ADV. SRI.N.P.SAMUEL

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21/08/2007, ALONG WITH CRP NO.212 OF 2000 AND CRP NO. 205 OF 2000, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.M.P.NO.392/2000 IN C.R.P.NO.197/2000

DISMISSED

21/08/2007 SD/- K.T.SANKARAN, JUDGE

//TRUE COPY//

AHZ/

K.T. SANKARAN, J.

C.R.P. Nos.197, 205 & 212 OF 2000

Dated this the 21st day of August, 2007

O R D E R

The petitioner is the first defendant in O.S.No.569 of 1994, on the file of the Ist Additional Sub Court, Ernakulam. The suit was filed by the first respondent for specific performance of an agreement for sale.

2. The petitioner filed I.A.No.2464 of 1999 for amendment of the written statement. That application was partly allowed. Challenging that part of the order by which the prayer for amendment was not allowed, the first defendant has filed C.R.P.No.197 of 2000.

3. The first defendant also filed an application, I.A.No.2379 of 1999, to summon PW3 in order to obtain his specimen signature for the purpose of sending the same for comparison by a handwriting expert. That application was dismissed by the court below. C.R.P.No.212 of 2000 is filed against that order.

4. I.A.No.2381 of 1999 was filed by the first defendant to re-call PW1, who was examined in the case. The court below dismissed that application also. C.R.P.No.205 of 2000 is filed by the first defendant challenging the order in I.A.No.2381 of 1999.

5. Learned counsel for the first respondent raised a preliminary objection that the Civil Revision Petitions are not maintainable. He referred to the decision in **Shiv Shakti Co-operative Housing Society** v. **Swaraj Developers** (2003 (2) KLT 503(SC)). The proviso to sub-section (1) of Section 115 states that the High Court shall not vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding. The orders impugned in these revisions are purely interlocutory in nature. Even if the orders are set aside, no finality would be attained in so far as the lis is concerned. The Supreme Court in **Shiv Shakti Co-operative Housing Society's** case held thus:

> "32. A plain reading of S.115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is `yes' then the revision is maintainable. But on the contrary, if the answer is `no' then the revision is not maintainable. Therefore, if the impugned order is of interim in nature or does not finally decide the lis, the revision will not be maintainable. The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject matter of revision under S.115. There is marked distinction in language of S.97(3) of the Old Amendment Act and S.32(2)(i) of the Amendment Act. While in the former, there was clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly absent in S.32(2)(i). The amendment relates to procedures. No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered the parties are to proceed according to the altered mode, without exception, unless there is a different stipulation."

In view of the amendment to Section 115 of the Code of Civil Procedure

and in the light of the Supreme Court decision in **Shiv Sakthi Co-operative Housing Society's** case, the Civil Revision Petitions are not maintainable. The Civil Revision Petitions are accordingly dismissed. However, it is made clear that the revision petitioner would be entitled to challenge in Appeal the correctness or otherwise of the orders impugned in these Revisions, to the extent it is possible under Section 105 of the Code of Civil Procedure, in case an appeal at the instance of the first defendant becomes necessary. No order as to costs.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

C.R.P.NOS.197,205 & 212 OF 2000

O R D E R

21st August, 2007